

**BEFORE THE STATE BOARD OF
REGISTRATION FOR THE HEALING ARTS
STATE OF MISSOURI**

STATE BOARD OF REGISTRATION)
FOR THE HEALING ARTS)

Board,)
)

License Number R3M18
Re: AHC Case No. 03-0468 HA

WALTER CLYDE BOARDWINE, D.O.)
Respondent.)

SETTLEMENT AGREEMENT

Pursuant to the terms of § 536.060 and § 621.045, RSMo 2000, Walter Clyde Boardwine, D.O., (“Dr. Boardwine” or “Respondent”), and the Missouri State Board of Registration for the Healing Arts (the “Board”) hereby waive their right to a hearing and decision in the above-styled case by the Administrative Hearing Commission (the “Commission”) under the provisions § 334.100.2 and § 621.045.1, RSMo 2000, and, additionally, the right to a disciplinary hearing before the State Board of Registration for the Healing Arts under §621.110, RSMo 1994. In lieu thereof, the parties jointly stipulate and agree that a final disposition of this matter shall be effectuated as described below in this *Settlement Agreement* (the “Agreement”). This Agreement shall be binding in its entirety and consists of the parties’ waiver of procedural rights, joint stipulation of findings of facts and conclusions of law, together with an agreed to Consent Order.

1. Respondent acknowledges he understands the various rights and privileges afforded him by law and understands that this Agreement is in lieu of a contested case hearing by the Commission where Respondent would have the right to appear and be represented by counsel; the right to a hearing of the charges pending against him; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-

examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative commissioner concerning the charges pending against Respondent; the right to a ruling on questions of law by an administrative hearing commissioner; the right to seek recovery of attorney's fees and costs; the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline and the right to obtain judicial review of the decisions of the Commission and the Board. Having been advised of these rights as provided by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this Agreement as they pertain to Respondent.

2. The Board acknowledges that this Agreement fully and forever resolves, and is in lieu of proceeding with, the matter entitled State Board of Registration for the Healing Arts v. Walter Clyde Boardwine, D.O., Case No. 03-0468 HA (the "Complaint"), currently pending before the Commission, unless Respondent violates the Surgical Restrictions (as defined below). Respondent acknowledges that he previously received a copy of the Complaint in that matter and waives any further service that may be applicable. The Board acknowledges as consideration for this Agreement that the Complaint will be dismissed with prejudice no later than 30 days from the Effective Date (as defined below) of the Agreement. Said dismissal with prejudice shall not effect or otherwise impair the Board's ability to re-file its Complaint (or pursue other relief afforded by law) in the event Respondent violates the Surgical Restrictions imposed herein.

3. The parties to this Agreement stipulate that the Consent Order voluntarily agreed to by Respondent is based only on the Joint Proposed Findings of Fact and Joint Proposed Conclusions of Law set out in Part I herein. The parties stipulate and agree that the Consent Order is not, nor may it be construed, recorded or reported as, disciplinary action of any kind whatsoever against Respondent, either under §334.110.4 or otherwise.

4. Respondent, together with his heirs and assigns, and his attorneys, hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any

former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

5. The Board, on behalf of itself, its members, employees, agents, and attorneys, past, present and future, and anyone else acting by, through or under them, or any of them, hereby releases, waives and forever discharges Respondent of, from and against any and all liability, disciplinary action, damages, claims, causes of action, fees, costs and expenses of any kind (including without limitation attorneys' fees) arising from, related to or connected with (i) the Complaint, (ii) the treatment provided by Respondent to the patients referenced in the Complaint or the Board's investigation thereof, (iii) all allegations of wrongdoing asserted in the Complaint, and (iv) the matters raised in this Agreement and/or the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

6. The parties understand and agree that the Board will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended, as well as any applicable reporting requirement under federal law or regulation.

7. The Board acknowledges and agrees that Respondent vehemently denies all allegations of wrongdoing alleged in the Complaint and that Respondent and the Board have entered into this Agreement to avoid the costs and uncertainty of further litigation concerning such matters.

8. The Board acknowledges and agrees that this Agreement represents a settlement of the matters raised (or which could have been raised) in the Complaint and that nothing contained or

referenced in this Agreement (including, without limitation, the Surgical Restrictions imposed herein) may be used against, or otherwise referred to in any proceedings or matters involving, Respondent, other than for purposes of enforcing this Agreement. Further, the Board stipulates and agrees that the treatment Respondent provided to the patients referenced in the Complaint may not be used or otherwise relied upon by the Board to initiate or otherwise pursue any other disciplinary action against Respondent, unless Respondent violates the Surgical Restrictions imposed herein.

I.

Based upon the foregoing, the parties jointly stipulate to the following Findings of Fact and Conclusions of Law as the basis for implementing the Consent Order in Part II.

JOINT PROPOSED FINDINGS OF FACT

1. The Missouri State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to §334.120, RSMo, for the purpose of executing and enforcing provisions of Chapter 334, RSMo, Physicians and Surgeons.
2. Respondent, Walter Clyde Boardwine, D.O. ("Dr. Boardwine"), is licensed by the Board as a physician and surgeon.
3. Dr. Boardwine's license No. R3M18 is, and at all times hereinafter mentioned, was, current and active.
4. At the time Dr. Boardwine provided treatment to patient MO (as identified in the Complaint), he practiced primarily in the area of orthopedic surgery and maintained his principle office in Farmington, Missouri.
5. In September 1998, patient MO presented to Dr. Boardwine for surgical procedures to treat lumbar instability.
6. On December 8, 1998, Dr. Boardwine performed lumbar spinal surgery. The surgical procedure included a Gibbs decompression, pedicle to pedicle L3-L4, L4-L5 and L5-S1

- left to right, with central interbody cage at L3-4 and 4-5 with pedicle screw fixation, L3-S1 with posterolateral bone graft.
7. Post-operatively, the Board contends that patient MO suffered complications from the surgical procedure, including loss of movement in his lower extremities.
 8. The Board further contends, in part, that Dr. Boardwine's conduct deviated from the appropriate professional standard with respect to: a) his interpretation of the patient's preoperative CT scans, b) his response to the patient's alleged distress and symptoms postoperatively, and c) his preoperative consideration of the patient's medication and/or allergies.
 9. Dr. Boardwine acknowledges that the Board's contentions, if accepted as true, would constitute a sufficient basis for the Board to impose discipline because said conduct would constitute unprofessional conduct or conduct that might be harmful or dangerous to the physical health of a patient.
 10. Dr. Boardwine's acknowledgment, however, is not intended to constitute, nor shall it be construed as, an admission of liability or wrongdoing with respect to his care and treatment of patient MO, which liability and/or wrongdoing Dr. Boardwine expressly denies.

JOINT PROPOSED CONCLUSIONS OF LAW

11. Pursuant to § 334.100.2, RSMo Supp, 1997-2004, the Board is authorized to discipline a licensee for conduct that violates one or more provisions of Chapter 334 or any lawful rule or regulation promulgated and adopted thereunder.
12. Section 334.100.2 (4), RSMo Supp. 1997-2004, provides the following as grounds for discipline:
 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or *unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter*, including, but not limited to, the following:

13. Unprofessional conduct applies to both unintentional conduct and intentional conduct. *Missouri Bd. of Registration for the Healing Arts v. Swanson*, No. HA-99-1039, at 28 (Mo. Admin. Hearing Comm'n, Sept. 12, 2001).
14. Respondent acknowledges that the treatment he provided to patient MO relates to the performance of a function or duty of the profession licensed and regulated by Chapter 334, RSMo.
15. For purposes solely of this Agreement, Respondent acknowledges that the allegations of wrongdoing set forth in numbered paragraph 8 above, if accepted as true, would create sufficient cause for the imposition of discipline pursuant to § 334.100.2(4) for unprofessional conduct regardless of whether the conduct occurred intentionally or unintentionally.
16. Dr. Boardwine's acknowledgment, however, is not intended to constitute, nor shall it be construed as, an admission of liability or wrongdoing with respect to his care and treatment of patient MO, which liability and/or wrongdoing Dr. Boardwine expressly denies.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the **Consent Order** entered by the Missouri State Board of Registration for the Healing Arts in this matter under the authority of §536.060, RSMo 2000. This **Consent Order** will be effective once all parties have signed the Agreement (the "Effective Date") and without any further action by either party, and shall not constitute, nor be construed, reported or recorded as, disciplinary action of any kind whatsoever by the Board against Respondent.

A. The license, **number R3M18**, issued to Respondent Walter Clyde Boardwine, D.O. is hereby **VOLUNTARILY RETIRED WITH RESPECT TO THE PERFORMANCE ANY BACK SURGERY INVOLVING THE IMPLANTATION AND/OR FIXATION OF ANY HARDWARE TO THE SPINAL CORD AREA**. This voluntary action shall cause Respondent to have a restricted license with which to practice as a physician in the state of Missouri. The scope of the restriction is set forth in paragraph B, below, and shall continue indefinitely or until removed pursuant to the terms and conditions set forth in paragraphs C, below.

B. Dr. Boardwine's license is restricted voluntarily so that he shall no longer perform spinal surgery involving the implantation and/or fixation of any hardware to the spinal cord area. The restriction applies to any surgical procedure where there is any type of implantation and/or fixation of hardware to the spinal cord area (the "Surgical Restrictions"). This restriction includes any situation where Dr. Boardwine would he, himself, would perform or assist in the operation of the above-described procedure(s). Said restriction shall not, however, include any other surgical procedure for which Dr. Boardwine currently is licensed to perform as long as he possess the necessary skill and competency. Said restriction shall not prevent Dr. Boardwine from performing non-restricted surgical procedures in conjunction with operative settings where other physicians may be performing services that Dr. Boardwine is restricted from conducting himself. Notwithstanding the foregoing and/or anything to the contrary contained herein, the Surgical Restrictions discussed above shall not prohibit Dr. Boardwine from performing the restricted surgical procedures during a Board approved spine fellowship mini-residency program, as discussed below.

C. The Surgical Restrictions affecting Dr. Boardwine's license may not be lifted or otherwise removed until such time as the following events occur:

- a) Dr. Boardwine successfully completes, at his own expense, a six (6) month spine fellowship mini-residency program, at a program that is approved in advance by the Board.

- b) A letter of competency is received at the Board's office from the director (or other appropriate executive) of the mini-residency program stating that Dr. Boardwine is competent to perform spinal surgeries.
- c) Dr. Boardwine completes a Board approved medical recordkeeping course at his own expense.

D. Provided Dr. Boardwine complies with all of the conditions of paragraph C, above, Dr. Boardwine may petition the Board to remove Surgical Restrictions from his license, at which time the Board shall issue Dr. Boardwine an unrestricted license, provided, however, that Dr. Boardwine meets all other qualifications for licensure at that future date. To the extent the Board does not approve a proposed mini-residency program or does not approve a proposed medical recordkeeping course, Dr. Boardwine may challenge such refusal through applicable administrative and/or judicial review.

E. During the period of restriction, Dr. Boardwine shall timely renew his license, shall timely pay all fees required for licensure and shall comply with all other Board requirements necessary to maintain his license. This provision shall not prevent Dr. Boardwine from surrendering his license if he so chooses or from having his license reclassified to inactive or retired if such classifications exist.

F. This Agreement fully and forever resolves all patient cases set forth in this Agreement or identified in the Board's Complaint in AHC Case No. 03-0468 HA, unless Dr. Boardwine violates the Surgical Restrictions imposed herein.

G. If Dr. Boardwine violates the Surgical Restrictions imposed herein, the Board may move to reinstate the above-referenced Complaint, and Dr. Boardwine agrees to it (including, without limitation, restricting, revoking or otherwise lawfully disciplining Dr. Boardwine's license, as authorized by and in accordance with applicable law) and will not be bound by this Agreement. Notwithstanding the foregoing, Dr. Boardwine preserves all statute of limitation defenses associated with the initial filing of this Complaint.

H. Each party shall bear its own costs and attorneys' fees incurred herein.

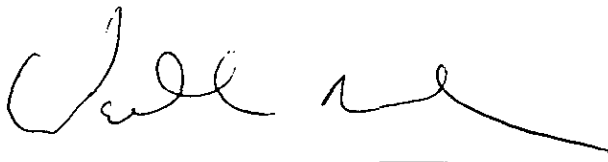
I. This Consent Order does not bind the Board or restrict the remedies available to it concerning any alleged violation of Chapter 334, RSMo, by Dr. Boardwine unrelated to the Complaint and all other matters released by the Board in numbered paragraph 5 of this Agreement (see page 3 of this Agreement).

J. The parties understand that this Agreement and Consent Order will be maintained as a public document under Missouri law and that this non-disciplinary resolution is reportable to the National Practitioner's Data Bank, as well as the Board's newsletter and website. The language used in reporting this Agreement and Consent Order shall be agreed upon by both parties, subject to any requirements imposed by law or applicable regulation.

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In consideration of the foregoing, the parties consent to the entry of record and approval of this *Settlement Agreement* as a final resolution of this matter.

RESPONDENT



Walter C. Boardwine, D.O.

Dated: May 27, 2005

PETITIONER

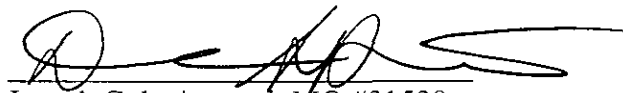
STATE BOARD OF REGISTRATION FOR THE
HEALING ARTS



Tina Steinman
Executive Director

Dated: June 3, 2005

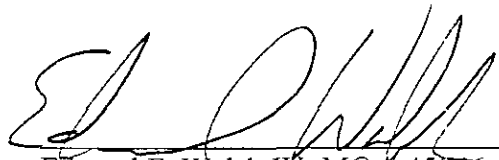
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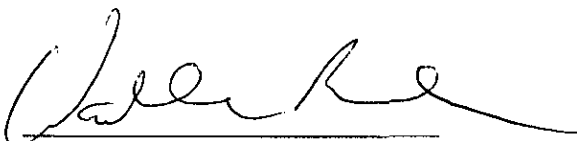


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Dated: May ____, 2005

WAIVER OF REVIEW

Respondent hereby voluntarily waives any all rights to submit this Agreement and Consent Order for review by the Commission as provided for in section 621.045, RSMo.



Walter C. Boardwine, D.O.

Date Waived: May 27, 2005